

TELEFAX COVER SHEET

TO: NAME: Fritz Schwindt MAIL CODE: _____

AGENCY/FIRM: NDDH PHONE #: _____

DATE: December 10, 2001

FAX MACHINE NUMBER: (701)328-5200

NUMBER OF PAGES (including cover sheet) 4

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REMARKS:

Following is a letter we received from the Dakota Resource Council, FYI.

Dakota Resource Council

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November 13, 2001

Richard Long, Director
Air and Radiation Program
EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

RE: May 29, 2001 Notice of PSD Increment Violations in North Dakota and Montana

Dear Mr. Long:

I am writing on behalf of the Dakota Resource Council (DRC) to ask that EPA take immediate action to stop ongoing violations of the prevention of significant deterioration (PSD) increments in several Class I areas of North Dakota and Montana. These violations are being caused by a number of industrial sources of sulfur dioxide (SO₂) emissions in North Dakota.

DRC is very concerned about the health and environmental consequences of these Clean Air Act violations. Due to the seriousness of the problem, we ask that EPA invoke its emergency powers under Clean Air Act Section 303 to require an immediate (within 60 days) reduction in emissions proportional to each source's modeled contribution to the PSD violations, sufficient to end the violations. Because the SO₂ sources causing the violations, lignite-fired power plants, a coal gasification plant, a refinery and oil and gas development are all capable of immediately reducing their emissions by reducing production, the citizens of North Dakota should not have to wait years for the installation of new control technology before the violations cease. As soon as the companies install more effective SO₂ control technology sufficient to address their contribution to the problem they would be allowed to return to previous production rates.

Furthermore, no new sources of SO₂ should be allowed to construct in the area until emission reductions at existing facilities have occurred to correct the existing increment violations, and also to make sure the new facilities do not cause a new violation of the increments. The necessity of requiring immediate SO₂ reductions is even more urgent because the state has providing matching funds for feasibility studies to three different companies to build 500 MW power plants in the state. In addition, the Three Affiliated Tribes of the Fort Berthold Reservation are apparently considering construction of an oil refinery.

Further, oil and gas development continues to increase. The North Dakota Department of Health must not be allowed to permit any new sources of SO₂ emissions that would contribute to the existing violations of the PSD increments.

The results of the North Dakota Children's Health Study, which are currently out for peer review, underscore the need for action. The study shows higher incidences of almost all asthma-related symptoms for children living in coal country. Some of these differences are statistically significant, and Dr. John Spengler, who supervised the study, recommends more sophisticated air quality monitoring in the area. While it appears that there have been no monitored violations of the national ambient air quality standards (NAAQS) for SO₂ at the few ambient air monitoring stations located in coal country, DRC questions whether there has been any cumulative air quality modeling analysis of all of the sources of SO₂ emissions in the western and central part of the state to determine if there are areas where the primary and/or secondary NAAQS for SO₂ are being violated. If there has not been an adequate modeling analysis consistent with EPA's requirements for air quality modeling, then DRC believes the results of the Children's Health Study warrant a cumulative modeling analysis to determine if NAAQS violations are occurring in coal country.

In addition to taking the emergency action requested above, we also urge EPA to issue a formal call for a State Implementation Plan (SIP) revision to require real SO₂ emission reductions to address the Clean Air Act violations. We understand that EPA at one time considered issuing such a call. Then, for reasons that are not clear to us, both EPA and the state determined the 1999 modeling analysis was no longer valid. Is it perhaps because that modeling analysis would require a significant reduction of SO₂ emissions in North Dakota? DRC is very concerned that NDDH may continually revise the modeling analysis until it can show no violations of the PSD increments and thus no need to reduce SO₂ emissions.

Why did EPA not fulfill its responsibility to formally call for a revision to North Dakota's SIP to address these increment violations? Section 110(k)(5) of the Clean Air Act provides that

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to...otherwise comply with any requirement of the Act, the Administrator *shall* require the State to revise the plan as necessary to correct such inadequacies. (Our emphasis.)

40 C.F.R. § 51.166(a)(3) also provides:

If a State or the Administrator determines that...an applicable

increment is being violated, the plan shall be revised to correct...the violation. The plan shall be revised within 60 days of such a finding by the State or within 60 days following notification by the Administrator....

In a March 28, 2001 letter, EPA appears to have approved North Dakota's schedule to resolve the SO₂ increment violations in the state. However, this schedule sets forth only goals, not firm deadlines. Rather than simply accepting the state's unenforceable schedule "with a goal of" adopting a SIP revision by August 1, 2003, EPA clearly should have required a firm deadline for SIP revision.

The state and EPA determined that the applicable increments were being violated in 1982. Thus far, it is our opinion that the requirement of 40 C.F.R. § 51.166(a)(3) has been ignored, and EPA has failed to meet its nondiscretionary duty to require the state to revise its plan to correct the PSD increment violations. While we commend the EPA for finally taking some action now to address the increment violations, the NDDH's schedule is loose and unenforceable. Considering that nothing has been done to address these Clean Air Act violations for nineteen years, it is imperative that EPA establish firm, enforceable deadlines for reducing SO₂ emissions to address the increment violations.

In summary, DRC believes that EPA has a nondiscretionary duty to formally call for a revision to North Dakota's SIP to require enforceable deadlines for remedying the PSD increment violations, and we urge EPA to act immediately on this matter. Such action must include a backstop that a FIP will be promulgated if the state fails to adequately address the increment violations. DRC also requests opportunity for the public to comment on NDDH's revised modeling analysis, since the revisions to the analysis will determine the extent, if any, of emission reduction requirements adopted by the NDDH.

Please inform us as soon as possible regarding how EPA proposes to end the ongoing PSD increment violations in North Dakota and Montana. Would you also please provide us with copies of all correspondence, draft and final modeling analyses, and other documents regarding the violations of the SO₂ increments, and copies of any correspondence and cumulative NAAQS modeling analyses done as a result of the Children's Health Study?

Thank you very much.

Sincerely,



Linda Rauser, Chair
Dakota Resource Council